Mohd Syed bin Syed Jamaludin & Ors v MMIP Services Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24NCVC-1594–08 OF 2021
MOHD NAZLAN J
17 FEBRUARY 2021

Civil Procedure — Setting aside — Ex parte order — Malaysian defendants allowed Singaporean plaintiffs involved in road accident in Malaysia to sue and obtain final judgment against them in Singapore High Court without challenge — Defendants took the view Singaporean courts had no jurisdiction to hear any matter concerning the accident — When served with final judgment in the suits, Malaysian insurer obtained ex parte High Court order declaring insurer was not obliged to satisfy Singapore court's judgment debt — Singaporean plaintiffs applied to set aside ex parte order on ground it effectively frustrated any attempt by them to register and enforce the judgments under the Reciprocal Enforcement of Judgments Act 1958 ('the REJA') — Whether justice of case required ex parte order to be set aside in light of inequity and prejudice it would occasion to plaintiffs — Whether defendants could still contest any proceedings under the REJA if plaintiffs were to make the necessary applications thereunder

The plaintiffs in this action were all Singaporeans. The first, third, fourth, sixth and ninth plaintiffs had suffered serious injuries when a bus they were travelling in on Malaysia's North-South Expressway went off the road and plunged into a ravine near Muar in the State of Johor, killing six men, eight women and a child and severely injuring 16 others on the eve of Christmas Day in 2016. The second, fifth, seventh and eighth plaintiffs were the administrators of the estates of passengers in the bus who had died from injuries sustained in the accident. At the material time, the bus was owned by the second defendant, driven by the third defendant and insured by the first defendant ('D1'). When a law firm in Singapore notified D1 that the plaintiffs would be filing actions in the Singapore High Court to claim damages for the injuries they had suffered in the accident, D1 through its solicitors replied that the Singapore courts had no jurisdiction over the matter as the cause of action occurred in Malaysia and that D1 would not submit to the jurisdiction of the Singapore courts. The plaintiffs, nevertheless, proceeded to file their claims in the Singapore High Court and eventually obtained final judgments on their claims after assessment of damages were completed. The plaintiffs had kept the defendants informed of the hearing dates at every step of the proceedings until final judgment was obtained, but the defendants, in particular D1, took no step to either appear in the Singapore court or challenge the court's jurisdiction to hear the matters. It was only when D1 was served with the final judgments

in the actions with a demand for payment of the judgment debts that D1 applied to the High Court in Malaysia for an ex parte order (which was granted) declaring that D1 was not liable to satisfy any of the judgment debts on the ground that the Singapore High Court had no jurisdiction to determine the plaintiffs' suits. In the instant application, the plaintiffs sought to set aside D1's ex parte order largely on the ground that it effectively frustrated any attempt by the plaintiffs to register and enforce the Singapore judgments under the Reciprocal Enforcement of Judgments Act 1958 ('the REJA'). At the outset of the hearing of the application, the defendants raised the preliminary objection ('PO') that the affidavits of the plaintiffs which were affirmed in the English language in Singapore should not be admitted in evidence for breaching s 8 of the National Language Act 1963/1967. The plaintiffs, on the other hand, contended that the affidavits were admissible under O 41 r 13 of the Rules of Court 2012 ('the ROC') without being accompanied by a Bahasa Malaysia translation since the court had not ordered such translation to be filed.

Held, dismissing the PO and setting aside the ex parte order:

(1) The defendants' non-reaction and inactivity had allowed the plaintiffs to proceed to final judgment on their claims in the High Court at Singapore. Although the defendants had all the time and opportunity to enter appearance in the proceedings or to challenge the jurisdiction of that court or to take steps to set aside the final judgments, they chose not to take any such action. In fact, D1 had even requested that it be informed should the plaintiffs seek to enforce their judgments by way of the reciprocal enforcement process. This showed that the defendants were fully cognisant of the fact that the plaintiffs had the right to register the final judgments they had obtained by invoking REJA. On the other hand, the defendants did not exhibit good faith when they did not extend to the plaintiffs the reciprocity the latter deserved when the defendants proceeded to obtain the ex parte order to nullify the final judgments obtained by the plaintiffs (see paras 30–31 & 35).

(2) The principal basis for the plaintiffs' setting aside application was that there was a breach of natural justice in that the ex parte order should not be allowed to stand without the court hearing out the plaintiffs. And having heard the challenge to the ex parte order, this court was of the view that the justice of the case did not allow the order to stand in the light of the inequity and prejudice it would occasion to the plaintiffs (see paras 35 & 37–38).

(3) The plaintiffs were clearly entitled to register and execute in Malaysia the final judgments they had obtained by resorting to the provisions of REJA. But the ex parte order would prevent them from doing so. The order would violate REJA's very raison d'etre, namely, to provide for the

reciprocal enforcement of judgments of superior courts between participating countries. By defeating the application of REJA, it was almost like a contravention of a statute that justified the order to be set aside (see paras 40, 46 & 50).

(4) The defendants' fears about REJA were not only unfair but not well-grounded. The defendants had every right to be heard and to contest the proceedings under REJA should the plaintiffs make the necessary applications thereunder. Registration of judgment sought to be enforced was not automatic and there were provisions in REJA, such ss 5 and 6 thereof, for the setting aside of judgments already registered (see paras 48–49).

(5) The issue of forum of convenience raised by the defendants was irrelevant at this stage given that judgments on the legal suits had already been granted by the High Court of Singapore and the same were eligible to be registered and enforced in accordance with REJA. In any event, it had to be noted that whilst Malaysia was the defendants' place of residence and the place where the accident took place, the material witnesses, other than for the defendants, were all from Singapore. All the plaintiffs resided in Singapore, the doctors and medical professionals who treated the plaintiffs were all in Singapore, as were the administrators of the deceased plaintiffs. And some of the plaintiffs had practical difficulties to travel to Johor given the serious injuries they suffered in the accident. In other words, it could not be said that the forum of convenience was the sessions court at Muar, Johor, just because the defendants' place of business and the place where the accident took place were in Malaysia (see paras 51–54).

(6) The ex parte order obtained by D1 was not premised on any application made under s 96(3) of the Road Transport Act 1987 for a declaration that the policy of insurance was void and unenforceable. As such, it was irrelevant for the defendants to argue that it was not necessary for them to have given the plaintiffs any notice under s 96(3) before the ex parte order was applied for (see paras 61–62).

(7) The defendants were not prejudiced by the fact that the plaintiffs' affidavits were in the English language. The defendants not only had managed to reply to all of the plaintiffs' affidavits, but they never applied to court for an order that the plaintiffs' affidavits should only be admitted as evidence if they were accompanied by a Bahasa Malaysia translation. Order 41 r 13 of the Rules of Court 2012 clearly permitted an affidavit of a deponent affirmed outside the jurisdiction to be filed in the English language without being accompanied by a translation in the national language unless the court had otherwise ordered (see paras 13–14 & 18).

[Bahasa Malaysia summary

Plaintif dalam tindakan ini merupakan warganegara Singapura. Plaintif pertama, ketiga, keempat, keenam, dan kesembilan telah mengalami kecederaan teruk apabila bas yang mereka naiki atas Lebuhraya Utara Selatan telah terbabas keluar dari jalan dan jatuh kedalam gaung berhampiran Muar dalam negari Johor, telah menyebabkan kematian enam orang lelaki, lapan wanita dan satu kanak-kanak dan menyebabkan kecederaan serius kepada 16 orang yang lain pada hari sebelum Krismas tahun 2016. Plaintif kedua, kelima, ketujuh dan kelapan merupakan pentadbir estet penumpang dalam bas yang telah meninggal daripada kecederaan yang dialami semasa kemalangan. Pada masa yang material, bas yang dimiliki oleh defendan kedua, dipandu oleh defendan ketiga dan di beri insurans oleh defendan pertama ('D1'). Semasa firma guaman di Singapura memaklumkan D1 bahawa plaintif akan memfailkan tindakan di mahkamah Tinggi Singapura untuk menuntut pampasan untuk kecederaan yang dialami dalam kemalangan tersebut, D1 melalui peguamnya membalas bahawa mahkamah Singapura tiada bidang kuasa atas perkara ini kerana kausa tindakan berlaku di Malaysia dan bahawa D1 tidak akan menyerahkan diri kepada bidang kuasa mahkamah Singapura. Namun, plaintif tetap memfailkan tuntutan mereka di mahkamah Tinggi Singapura dan kemudiannya mendapat penghakiman akhir atas tuntutan mereka selepas taksiran kerugian selesai dilakukan. Plaintif terus memaklumkan defendan, secara khususnya D1, namun defendan tidak mengambil apa-apa tindakan untuk hadir di mahkamah Singapura atau untuk mencabar bidang kuasa mahkamah untuk mendengar perkara tersebut. Ianya hanya apabila D1 diserahkan penghakiman akhir dalam tindakan tersebut dengan satu tuntutan untuk pembayaran hutang penghakiman yang D1 memohon ke mahkamah Tinggi di Malaysia untuk satu perintah ex parte (yang mana telah dibenarkan) mengisytiharkan bahawa D1 tidak bertanggungan untuk memenuhi apa-apa hutang penghakiman atas alasan mahkamah Tinggi Singapura tiada bidang kuasa untuk menentukan tindakan plaintif. Dalam permohonan ini, plaintif cuba untuk mengenepikan perintah ex parte D1 berdasarkan alasan bahawa ianya secara langsung telah mengagalkan apa-apa cubaan oleh plaintif untuk mendaftar dan menguatkuasakan penghakiman Singapura di bawah Akta Penguatkuasaan Penghakiman Bersaling 1958 ('APPB'). Pada mula pendengaran permohonan, defendan mengemukakan satu bantahan awal ('BA') kepada afidavit plaintiff yang diikrarkan dalam bahasa Inggeris di Singapura sepatutnya tidak diterima pakai sebagai keterangan kerana bertentangan dengan s 8 Akta Bahasa Kebangsaan 1963/1967. Plaintif sebaliknya, mengatakan bahawa afidavit tersebut boleh diterima pakai di bawah k 41 A 13 Kaedah-Kaedah Mahkamah 2012 ('KKM') tanpa ianya disatukan dengan terjemahan Bahasa Malaysia kerana mahkamah tidak memerintahkannya difailkan.

Diputuskan, menolak bantahan awal dan mengenepikan perintah ex parte:

(1) Kegagalan untuk mengambil tindakan telah membenarkan plaintif untuk meneruskan dengan penghakiman akhir berkaitan dengan tuntutan mereka di mahkamah Tinggi di Singapura. Walaupun defendan mempunyai semua masa dan peluang untuk memasukki kehadiran dalam prosiding atau untuk mencabar bidang kuasa mahkamah tersebut atau untuk mengambil langkah untuk mengenepikan penghakiman akhir, mereka membuat keputusan untuk tidak mengambil tindakan tersebut. Walhal, D1 turut memohon bahawa ianya dimaklumkan sekiranya plaintif cuba untuk menguatkuasakan penghakimannya melalui cara 'reciprocal enforcement' ini menunjukan bahawa defendan sedar akan fakta bahawa plaintif berhak untuk mendaftarkan penghakiman akhir yang diperoleh mereka melalui APPB. Defendan juga tidak menunjukan niat baik apabila mereka tidak memberi kerjasama dengan plaintif yang sepatutnya apabila defendan terus untuk mendapatkan perintah ex parte untuk membatalkan perintah akhir yang diperoleh oleh plaintif (lihat perenggan 30–31 & 35).

(2) Prinsip asas untuk permohonan mengenepikan plaintif adalah bahawa wujud pelanggaran prinsip keadilan asasi yang mana perintah ex parte tersebut sepatutunya tidak dibenarkan kekal tanpa mahkamah mendengar plaintif. Selepas mendengar cabaran terhadap perintah ex parte tersebut, mahkamah ini berpandangan bahawa keadilan kes tidak membenarkan perintah tersebut kekal atas sebab ketiadaan ekuiti dan prejudis yang akan dialami oleh plaintif (lihat perenggan 35 & 37–38).

(3) Plaintif berhak untuk mendaftar dan menguatkuasakan di Malaysia penghakiman akhir yang diperoleh mereka dengan bergantung kepada peruntukan APPB. Akan tetapi perintah ex parte tersebut akan menghalangnya daripada berbuat sedemikian. Perintah tersebut adalah bercanggah dengan tujuan utama APPB, iaitu untuk memberikan kerjasama penguatkuasaan kepada penghakiman mahkamah tinggi diantara negara yang terbabit. Dengan menewaskan pemakaian APPB, ianya seakan-akan pelanggaran statut yang memberikan asas agar perintah tersebut diketepikan (lihat perenggan 40, 46 & 50).

(4) Ketakutan defendan berkaitan dengan APPB bukan sahaja tidak adil tetapi juga tidak berasas. Defendan mempunyai hak untuk didengar dan mencabar prosiding dibawah APPB sekiranya plaintif membuat permohonan yang sewajarnya di bawahnya. Pendaftaran penghakiman yang dipohon untuk dikuatkuasakan bukanlah automatik dan wujud peruntukan di bawah APPB seperti ss 5 dan 6, untuk mengenepikan penghakiman yang telah pun didaftarkan (lihat perenggan 48–49).

(5) Isu forum yang sesuai yang dibangkitkan oleh defendan adalah tidak relevan diperingkat ini mengambil kira bahawa penghakiman guaman telahpun dibenarkan oleh mahkamah Tinggi Singapura dan perkara yang sama berhak untuk didaftarkan dan dikuatkuasakan selaras dengan

APPB. Dalam apa keadaan sekalipun, ianya harus diambil maklum bahawa walaupun Malaysia merupakan tempat kediaman defendan dan tempat yang mana kejadian berlaku, saksi material, dan selain daripada defendan, kesemuanya dari Singapura. Semua plaintif berdiam di Singapura, doktor dan pakar perubatan yang merawat plaintif berada di Singapura, dan juga pentadir plaintif yang telah meninggal dunia. Dan beberapa plaintif mempunyai kesukaran praktikal untuk berjalan ke Johor mengambil kira keseriusan kecederaan yang dialami mereka dalam kemalangan tersebut. Dalam kata lain, ianya tidak boleh dikatakan bahawa forum yang sesuai merupakan mahkamah sesyen di Muar, Johor hanya kerana tempat perniagaan defendan dan tempat kemalang tersebut berlaku adalah di Malaysia (lihat perenggan 51–54).

(6) Perintah ex parte yang diperoleh oleh D1 tidak berdasarkan apa-apa permohonan yang dibuat di bawah s 96(3) Akta Pengangkutan Jalan 1987 untuk satu pengisytiharan bahawa polisi insurans adalah tidak sah dan tidak boleh dikuatkuasakan. Oleh itu, ianya tidak relevan untuk defendan menghujahkan bahawa ianya tidak perlu untuk mereka memberi plaintif apa-apa notis di bawah s 96(3) sebelum perintah ex parte tersebut dipohon (lihat perenggan 61–62).

(7) Defendan tidak terprejudis oleh fakta bahawa afidavit plaintif dalam bahasa Inggeris. Defendan bukan sahaja dapat memohon kepada kesemua afidavit plaintif, akan tetapi mereka tidak pernah memohon kepada mahkamah untuk satu perintah bahawa afidavit plaintif hanya boleh diterima sebagai keterangan sekiranya ianya dikepilkan bersama-sama dengan terjemahan dalam Bahasa Malaysia. Aturan 41 k 13 KKM dengan jelas membenarkan afidavit seorang deponen yang diikrarkan diluar bidang kuasa difailkan dalam Bahasa Inggeris tanpa dikepilkan dengan terjemahan dalam bahasa kebangsaan kecuali di mana diperintahkan sebaliknya oleh mahkamah (lihat perenggan 13–14 & 18).]

Cases referred to

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393, FC (folld)

Dato' Seri Anwar bin Ibrahim v Tun Dr Mahathir bin Mohamad [2010] 2 MLJ 41, CA (refd)

Datuk M Kayveas v PV Das (for himself and on behalf of People's Progressive Party of Malaysia) [1997] 3 MLJ 671, CA (refd)

Datuk Syed Kechik bin Syed Mohamed v Government of Malaysia & Anor [1979] 2 MLJ 101, FC (refd)

Mohamad Rafiq Muiz bin Ahmad Hanipah v Pacific & Orient Insurance Co Bhd & Ors [2018] MLJU 896; [2018] 1 LNS 942, HC (refd)

Sakapp Commodities (M) Sdn Bhd v Cecil Abraham (Executor of the Estate of Loo Cheng Ghee) [1998] 4 MLJ 651, CA (folld)

Siti Nur Aishah bt Ishak v Golden Plus Holdings Bhd [2017] 3 MLJ 701; [2017] 8 CLJ 272, HC (refd)
Standard Chartered Bank (Singapore) Limited v Pioneer Smith (M) Sdn Bhd [2015] MLJU 710; [2015] 7 CLJ 677, HC (refd)
Stone World Sdn Bhd v Engareh (M) Sdn Bhd [2020] 12 MLJ 237, FC (refd)
Sykt Telekom Malaysia Bhd v Business Chinese Directory Sdn Bhd [1994] 2 MLJ 420, SC (refd)
Tawin Industries (M) Sdn Bhd v Fec Cables (M) Sdn Bhd [2005] 1 MLJ 728, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 8
Motor Vehicles (Third-Party Risks and Compensation) Act 1960 [SG]
National Language Act 1963/1967 s 8
Reciprocal Enforcement of Judgments Act 1958 ss 3(3), 5, 6, First Schedule
Road Transport Act 1987 s 96, 96(1), (3)
Rules of Court 2012 O 41 rr 12, 13, O 42 r 13, O 57, O 92 r 1(1)
Rules of High Court 1980 (repealed by Rules of Court 2012)
Specific Relief Act 1950 s 41
Subordinates Courts Act 1948 s 59

Darren Lai (with Chew Zhen Tao) (Richard Wee Chambers) for the plaintiffs.
Reuben Netto (with Silva Velu and Monisha Pandey) (Silva Velu & Co) for the defendants.

Mohd Nazlan J:

INTRODUCTION

[1] This was the plaintiffs' application by way of an originating summons ('this OS') primarily for a declaration that an ex parte order dated 16 July 2021 granted by this court in another Originating Summons No WA-24NCVC-1306–07 of 2021) ought to be set aside.

[2] After hearing parties, in a proceeding conducted by way of remote communication technology via Zoom, I allowed the application, and highlighted the main reasons for the same. This judgment contains the full reasons for the decision.

KEY BACKGROUND FACTS

[3] This case is all about a very tragic bus accident at the North South Expressway which occurred on 24 December 2016, near Muar in the state of Johor. The bus had departed from JB Sentral in Johor Bahru and en route to Kuala Lumpur's Bandar Tasik Selatan Integrated Bus Terminal.

[4] The said vehicle, bearing registration number AJC6633, was on that fateful day driven by the third defendant who was alleged to be the servant and/or agent of the second defendant.

[5] It was said that he was on the wheels at the time at a high speed, had lost control of the vehicle which then plunged into a ravine, killing six men and eight women, including one child, with another seven Malaysians, six Singaporeans, two Myanmar nationals and one other person whose nationality was not identified, sustaining serious injuries.

[6] The plaintiffs in this OS claimed to have been victims of the said accident. The first, third, fourth, sixth and ninth plaintiffs had all suffered severe, debilitating and crippling injuries, the second and fifth plaintiffs are both the administrators of a deceased victim, who had sustained serious injuries and but has since passed away, whilst the seventh plaintiff is the administrator of another deceased victim who had succumbed to her serious injuries and has also died. The same goes for the eighth plaintiff, who is the administrator of another lady, who had sustained serious injuries and has unfortunately passed away as a result thereof.

[7] The Malaysian Land Public Transport Commission had suspended the second defendant's license with immediate effect following the accident. The second defendant was insured by the first defendant at all material times.

[8] The crux of the dispute may be simply stated in this manner. Despite action in negligence for compensation having been taken in the Singapore court, the first defendant (the insurer) as well as the owner and driver of the bus did not submit to the jurisdiction of the courts in the Republic but instead managed to obtain an ex parte order from this court declaring that the action arising from the accident, having occurred in Muar, is properly within the jurisdiction of the courts in Malaysia, and that they could not be made liable to any judgment of the Singapore court against the owner and the driver in relation to the accident.

[9] The plaintiffs now sought to set aside the said ex parte order.

EVALUATION AND FINDINGS OF THIS COURT

Language of affidavit

[10] There is one preliminary objection raised by the defendants. They argued that as the plaintiffs' affidavits are sworn in English in Singapore, these affidavits are defective pursuant to s 8 of the National Language Act 1963/1967 ('the NLA'), O 41 r 13 and O 92 r 1(1) of the Rules of Court 2012, whereby the

admissibility of an affidavit in a foreign language cannot be automatically admitted unless the court otherwise orders the exclusion of the translation in the national language. Additionally, s 8 of the NLA provides for the need for an application to be made by any party to regularise the proceedings in the National Language or partly in English.

[11] The defendants also referred to the case *Dato' Seri Anwar bin Ibrahim v Tun Dr Mahathir bin Mohamad* [2010] 2 MLJ 41 where the court held as follows:

> This court must strictly enforce the need to file court documents in the Malay language as ordained by the law in this country. Pursuant to O 92 r4 of the Rules of the High Court 1980, the filing of the memorandum of appeal in the English language constituted an injustice to the respondent and it was an abuse of the process of the court.

[12] The plaintiffs disagreed with this argument. And like the defendants, the plaintiffs also referred to O 41 r 13 of the Rules of Court 2012. It reads:

> 13 Language of affidavit (O 41 r 13)
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> An affidavit of a deponent affirmed outside the jurisdiction may be filed in the English language and unless the Court otherwise orders, need not be accompanied by a translation in the national language.

[13] It is the position taken by the plaintiffs that on the clear language of O 41 r 13 as the plaintiffs' affidavits herein were affirmed in Singapore, they may be filed in the English language since this court did not order otherwise, and that the affidavits need not therefore be accompanied by a translation in the national language, ie Bahasa Malaysia.

[14] I cannot but readily agree with this, as the words in O 41 r 13 are free from any ambiguity. What is less clear is the basis of the defendants' reliance on O 41 r 13 since it does not advance their case. It may well be the view that finds support in cases such as *Sykt Telekom Malaysia Bhd v Business Chinese Directory Sdn Bhd* [1994] 2 MLJ 420 which established the necessity to ensure documents are filed in the national language.

[15] But some of the earlier authorities no longer represent the present state of the law in Malaysia on this subject. Specifically, under the previous Rules of High Court 1980, there was no equivalent of the said O 41 r 13 of the Rules of Court 2012.

[16] Section 8 of the NLA provides as follows:

> 8 Language of Courts

A All proceedings (other than the giving of evidence by a witness) in the Federal Court, Court of Appeal, the High Court or any Subordinate Court shall be in the national language:

Provided that the Court may either of its own motion or on the application of any party to any proceedings and after considering the interests of justice in those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be partly in the national language and partly in the English language.

[17] Order 41 r 13 has specifically provided that unless the court otherwise orders, an affidavit of a deponent affirmed outside Malaysia may be filed in English and need not be accompanied by a translation in Malay. And under O 41 r 12, an affidavit taken outside Malaysia is admissible without proof of seal. For completeness I should add that the case of *Dato' Seri Anwar bin Ibrahim* referred to by the defendants is quite irrelevant as it concerned a memorandum of appeal which was filed in English. It has nothing to do with affidavits which is the issue now before this court.

[18] In any event, the defendants did not apply to court for an order under O 42 r 13 that the plaintiff's affidavits should only be admitted as evidence if they were accompanied by a Malay translation. Not only that, the defendants had managed to reply to all of the plaintiffs' affidavits. I find that there is absolutely no prejudice to the defendants occasioned by the fact that the plaintiffs' affidavits were entirely in English.

[19] This preliminary objection is as such without merit.

Background and status of proceedings

[20] It is apposite that the chronology of the events be stated albeit in summary fashion. A law firm in Singapore representing the plaintiffs, Messrs United Legal Alliance LLC, now know as Messrs Civic Legal LLC ('CLL') had first notified the first defendant, as the insurers of the bus, on the intended proceedings to be filed in Singapore courts. The first defendant then engaged Messrs Silva Velu & Co to respond to CLL's notice. The response given was that the Singapore courts had no jurisdictions to hear the matter as the cause of action arose in Malaysia and the first defendant would not submit to the courts' jurisdiction in Singapore.

[21] Despite the stance of the first defendant, CLL, for the plaintiffs, proceeded in their claim and managed to enter judgment in the absence of the first defendant on 3 February 2020 and even proceeded to have damages assessed on 23 February 2021. The decision was delivered on 28 April 2021.

[22] Whilst the first defendant was unaware whether CLL had served the interlocutory judgment and final judgment on the insured and its driver, the first defendant successfully applied to this court on an ex parte basis to obtain the aforesaid declaratory reliefs.

[23] The principal arguments submitted by the defendants then before this court are that first it was argued that the rights of the defendants would be seriously affected following the judgment obtained by the plaintiffs such that there would be a real likelihood of execution of the said Singapore judgment in pursuance of the Reciprocal Enforcement of Judgments Act 1958 ('the REJA'). Secondly, they sought the ex parte order following the refusal of the plaintiffs to file the suit in Malaysia, and that there was no requirement in law for the defendants to notify the plaintiffs of the intended filing of the ex parte application because the plaintiffs did not come within the definition of 'plaintiff' under s 96(3) of the Road Transport Act 1987 ('the RTA').

[24] Thirdly, the High Court's jurisdiction to make an ex parte order is unlimited, subject only to its own discretion. In that regard, the defendants also placed reliance on the following passage from the judgment of the Federal Court in the case of *Datuk Syed Kechik bin Syed Mohamed v Government Of Malaysia & Anor* [1979] 2 MLJ 101:

> Numerous authorities were cited by the parties in support of their submissions to show the manner in which the discretion should be exercised. I do not think it necessary to refer to all of them for the purpose of this judgment. The basis of the jurisdiction is O 25 r 5 of the Rules of the Supreme Court. The prevailing view seems to be that the court's jurisdiction to make a declaratory order is unlimited subject only to its own discretion. In *Ibeneweka v Egbuna* [1964] 1 WLR 219 p 224 Viscount Radcliffe in giving the decision of the Privy Council stated:
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> > The general theme of judicial observations has been to the effect that declarations are not lightly to be granted. The power should be exercised 'sparingly', with 'great care and jealously,' with 'extreme caution,' with 'the utmost caution.' These are indeed counsels of moderation, even though as, Lord Dunedin once observed, such expressions afford little guidance for particular cases. Nevertheless, anxious warnings of this character appear to their Lordships to be not so much enunciations of legal principle as administrative cautions issued by eminent and prudent judges to their possibly more reckless, successors. After all, it is doubtful if there is more of principle involved than the undoubted truth that the power to grant a declaration should be exercised with a proper sense of responsibility and a full realisation that judicial pronouncements ought not to be issued unless there are circumstances that call for their making. Beyond that there is no legal restriction on the award of a declaration.

[25] The plaintiffs on the other hand, took issue with the course of action taken by the defendants, and especially with the granting of the ex parte order. Primarily, the defendants are and were fully aware of the suits filed at the High

A Court of Singapore and had been apprised of the development of the proceedings at Republic, by the plaintiffs themselves.

[26] This could be seen from first, the notices of demand dated 27 August 2019 had been served on the first and second defendants, and secondly, the writs of summons had been duly served on the first defendant, and duly acknowledged by the first defendant's solicitors, Messrs Silva Velu & Co. Thirdly, given that the defendants took no further action to enter an appearance at the High Court of Singapore, the plaintiffs were able to enter judgments against the second defendant in default of appearance on 31 January 2020 and 3 February 2020. These judgments were served on the second defendant by Messrs United Legal Alliance LCC, and acknowledged receipt by the second defendant on 27 November 2020.

[27] Fourthly, the plaintiffs had then served no fewer than six affidavits of evidence in chief on the second defendant which were later fixed for the assessment of damages hearing on 23 February 2021, for which the first and second defendants were duly notified vide a notice dated 16 February 2021. Fifthly, subsequently, following the conclusion of the assessment hearing, the plaintiffs served the final judgment by the High Court of Singapore in Suit Nos HC/S 1019/2019, HC/S 1021/2019, HC/S 1023/2019, HC/S 1026/2019, HC/S 1027/2019 and HC/S 1028/2019 all dated 28 April 2021 to the first defendant on 2 July 2021. For this, the plaintiffs though their solicitors, Messrs Civic Legal LCC demanded payment of the judgment sum awarded.

[28] The key grievance of the plaintiffs therefore is that despite having been kept informed of virtually every step of the proceedings pursued by the plaintiffs in Singapore, the defendants have taken the conscious decision not to take any step to either enter an appearance at the High Court of Singapore or mount a challenge on the jurisdiction of the High Court of Singapore.

[29] Indeed, when served with the notices of demand, the defendants' solicitors stated that only the courts in Malaysia have jurisdiction to hear the matter, and after being served with the writs of summons, no steps were taken by the defendants to object to the same, let alone challenge the jurisdiction of the High Court of Singapore. Similarly, when served with the notice of appointment for assessment of damages dated, the first defendant only replied that it did not submit to the jurisdiction of the courts of Singapore. Yet, the defendants again took no steps to challenge the jurisdiction of the High Court of Singapore. Given this, neither have the plaintiffs been offered with settlement proposals let alone paid any compensation by the defendants.

[30] The point is as argued by the plaintiffs, correctly in my view, the non-reaction and inactivity on the part of the defendants had implicitly allowed the hearing of the assessment of damages for the plaintiffs to proceed. And equally importantly the defendants have not taken any steps to set aside the final judgments issued by the High Court of Singapore. The defendants had all the time and opportunity to enter appearance or challenge the jurisdiction of the High Court of Singapore but chose to do neither. The defendants undoubtedly had ample opportunity to enter appearance and/or challenge the jurisdiction of the High Court of Singapore but had deliberately determined not to do so. There is also absolutely no suggestion that there was any impediment to do so.

[31] Even more so, the first defendant had even requested that it be informed should enforcement be sought by way of the reciprocal enforcement process. This goes to show that the defendants were fully cognisant of the fact that the plaintiffs had the right to register the final judgment obtained by invoking the REJA.

[32] The basis for this application to set aside the said ex parte order is the leading Federal Court decision in *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393 whereby the Federal Court held that orders that have been obtained, amongst others, in breach of rules of natural justice can be set aside.

[33] Mohd Azmi FCJ, in one of the judgments delivered in that case instructively held as follows:

> It is of course settled law as laid down by the Federal Court in *Hock Hua Bank*'s case that one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction. But one special exception to this rule (which was not in issue and therefore not discussed in *Hock Hua Bank*) is where the final judgment of the High Court could be proved to be null and void on ground of illegality or lack of jurisdiction so as to bring the aggrieved party within the principle laid down by a number of authorities culminating in the Privy Council case of *Isaacs v Robertson* [1985] AC 97 where Lord Diplock while rejecting the legal aspect of voidness and voidability in the orders made by a court of unlimited jurisdiction, upheld the existence of a category of orders of the court '... which a person affected by the order is entitled to apply to have set aside *ex debito justitiae* in the exercise of the inherent jurisdiction of the court, without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity, and give to the judge a discretion as to the order he will make.
>
> *The Privy Council through Lord Diplock also emphasised that the courts in England have not closed the door as to the type of defects in the final judgment of the court that can be brought into the category that attracts ex debito justitiae the right to have it set aside without going into the appeal procedure, 'save that specifically it includes orders that have been obtained in breach of rules of natural justice.* Similarly in this country, the

A statement of Abdoolcader J (as he then was) in *Eu Finance Bhd v Lim Yoke Foo* [1982] 2 MLJ 37 at p 39 provides the correct guideline on the subject:

> The general rule is that where an order is a nullity, an appeal is somewhat useless as despite any decision on appeal, such an order can be successfully attacked in collateral proceedings; it can be disregarded and impeached in any proceedings, before any court or tribunal and whenever it is relied upon — in other words, it is subject to collateral attack. In collateral proceedings, the court may declare an act that purports to bind to be non-existent. In *Harkness v Bells' Asbestos and Engineering Ltd* [1967] 2 QB 729, Lord Diplock LJ (now a Law Lord) said (at p 736) that 'it has been long laid down that where an order is a nullity, the person whom the order purports to affect has the option either of ignoring it or of going to the court and asking for it to be set aside'.

For my part, I must hasten to add that apart from breach of rules of natural justice, in any attempt to widen the door of the inherent and discretionary jurisdiction of the superior courts to set aside an order of court ex debito justitiae to a category of cases involving orders which contravened 'any written law', the contravention should be one which defies a substantive statutory prohibition so as to render the defective order null and void on ground of illegality or lack of jurisdiction. It should not for instance be applied to a defect in a final order which has contravened a procedural requirement of any written law. The discretion to invoke the inherent jurisdiction should also be exercised judicially in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice. In all cases, the normal appeal procedure should be adopted to set aside a defective order, unless the aggrieved party could bring himself within the special exception. (Emphasis added.)

[34] There is also authority which holds that as observed by Mahadev Shankar JCA in the case of *Datuk M Kayveas v PV Das (for himself and on behalf of People's Progressive Party of Malaysia)* [1997] 3 MLJ 671 in relation to ex parte orders that:

> Notwithstanding s 67 of the Courts of Judicature Act 1964, the proper remedy in the High Court for a party aggrieved by an order made ex parte in his absence is not to appeal but to apply to have it set aside by the judge who made it (see O 13 r 8, O 14 r 11, O 19 r 9, O 32 r 6 and O 35 r 2 of the RHC read with r 14 of the Rules).

[35] The principal basis for the plaintiffs' application herein is therefore a breach of natural justice in that the ex parte order cannot be allowed to stand without the court hearing the plaintiffs. Here, as highlighted earlier, the first and second defendants had been duly notified of every step of the proceedings, and had reasonable if not ample opportunities to challenge the jurisdiction of the High Court of Singapore. They chose not to. They instead asked the plaintiffs to inform them should the plaintiffs initiate proceedings under REJA but on their part the defendants did not exhibit good faith when they did not extend the plaintiffs the reciprocity the latter deserved when the defendants proceeded to obtain the ex parte an order to nullify the final judgments obtained in Singapore.

[36] Of relevance is the decision of *Tawin Industries (M) Sdn Bhd v Fec Cables (M) Sdn Bhd* [2005] 1 MLJ 728 where the High Court held that a defendant who wishes to challenge the jurisdiction of the court must enter a conditional appearance. The following passages from the judgment of the court are significant:

> 13. In my view, the defendant's filing of unconditional appearance gives rise to the defendant's submission to the jurisdiction of the High Court of Malaya at Melaka and so the defendant has waived his right to challenge the jurisdiction of this court, notwithstanding the defendant's conduct in filing this application which is in effect mounting a challenge based on jurisdiction. The defendant cannot be allowed to blow hot and cold or approbate and reprobate (per Peh Swee Chin FCJ in *Development and Commercial Bank*).
>
> ...
>
> 15. *In dismissing the application, Abdul Malek Ahmad J (now PCA) applied the principles enunciated by the Court of Appeal (Singapore) in The 'Avro' and explained at p 262 D–G that the effect of entering an unconditional appearance is twofold ie it waives any irregularity of the writ or its service, and the defendant is considered to have submitted to the jurisdiction of the court, and that a defendant who wishes to challenge the jurisdiction of the court must therefore enter a conditional appearance.* (Emphasis added.)

[37] It is of course true that most of these facts were not unknown to the court when granting the ex parte order on 16 July 2021. But that was in the nature of an ex parte, without representation from the plaintiffs and a result of an exercise of judicial discretion. And now that the plaintiffs have surfaced and challenged the said order and made representation against it and sought to have it set aside, I examined again the basis of granting the ex parte order but after considering the affidavits and submissions of the parties, including particularly on the application of REJA, arrived at the conclusion that it cannot now be sustained.

[38] The justice of the case would not permit this court to allow the earlier order to stand in light of the inequity and prejudice that could be occasioned to and suffered by the plaintiffs. This stance, in my view, is in accord with the principle enunciated in the Court of Appeal case of *Sakapp Commodities (M) Sdn Bhd v Cecil Abraham (Executor of the Estate of Loo Cheng Ghee)* [1998] 4 MLJ 651 where it was emphasised that the remedy of declaration — which was what the ex parte order was about — as embodied in s 41 of the Specific Relief Act 1950 is discretionary in nature.

[39] In that case, Gopal Sri Ram JCA (as he then was) further instructively elaborated on the application of the relevant principle as follows:

> Although s 41 is not a complete code upon the subject of declaratory decrees

A (*Attorney General of Hong Kong v Zauyah Wan Chik & Ors and another appeal* [1995] 2 MLJ 620) and the power to make a declaration is almost unlimited (*Hanson v Radcliffe Urban District Council* [1922] 2 Ch 490 at p 507 per Lord Sterndale MR), yet, the remedy of declaration may be refused upon settled principles. *Thus, generally speaking, the court will not grant a declaratory judgment where an adequate alternative remedy is available* (*Manggai v Government of Sarawak & Anor* [1970] 2 MLJ 41) or upon hypothetical issues or upon an issue of no practical consequence (*Lim Kim Cheong v Lee Johnson* [1993] 1 SLR 313) or where it may be premature to grant a declaration (*Rediffusion (Hong Kong) Ltd v A-G of Hong Kong & Anor* [1970] AC 1136) or *where a plaintiff is guilty of laches (Faber Merlin (M) Sdn Bhd v Lye Thai Sang & Anor [1985] 2 MLJ 380) other inequitable conduct (City of London v Horner (1914) 111 LT 512) or where a 'cloaked declaration', that is to say, a declaration for a collateral purpose (Trawnik & Anor v Ministry of Defence [1984] 2 All ER 791) or with an improper motive, is sought (Everett v Griffiths [1924] 1 KB 941 at p 960). We wish to make it plain that this list is by no means exhaustive. We merely seek to demonstrate the wide variety of circumstances in which declaratory relief may be denied in the exercise of discretion.* (Emphasis added.)

[40] An important consideration that the plaintiffs having obtained the final judgments from the High Court of Singapore in the proceedings which the defendants refused to participate in, are clearly entitled to register and execute the same in Malaysia in accordance with the provisions of REJA.

[41] For the plaintiffs appeared to have met all the three requirements stated in s 3(3) of the REJA, namely that the judgments are those of a superior court which are firstly final and conclusive as between the parties thereto; secondly, there is payable thereunder a sum of money, and thirdly the judgments are from a country specified in the First Schedule to the said Act.

[42] The defendants must have known this, and this was most probably their dominant motivation for seeking the ex parte order, on the declaration that the defendants were not liable for the accident. This is almost akin to the act of 'unilaterally contracting out' of a statute. Which cannot ultimately succeed.

[43] The defendants relied on another passage from the judgment of Mohd Azmi FCJ in *Badiaddin Mohd Mahidin* as follows:

> [1] It is settled law that one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction. The one special exception to this rule is where the final judgment of the High Court can be proved to be null and void on the ground of illegality or lack of jurisdiction. Apart from the breach of natural justice, in any attempt to widen the door of the inherent and discretionary jurisdiction of the superior courts to set aside an order of court *ex debito justitiae* to a category of cases involving orders which contravened any written law, the contravention should be one which defies a substantive statutory prohibition so as to render the defective order null and void on the ground of

illegality or lack of jurisdiction. *The discretion to invoke the inherent jurisdiction should also be exercised judicially in exceptional cases, where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice*. (Emphasis added.)

[44] The above, which is in fact taken from the headnotes of the judgment in *Badiaddin Mohd Mahidin* as reported in *Current Law Journal* in fact supports the position of the plaintiffs, for in the instant case before me, there is much substance to the contention that the defect in the ex parte order is of such a serious nature that calls for the same be 'set aside to enable this court to do justice'.

[45] The position in *Badiaddin Mohd Mahidin* is reaffirmed in a recent Federal Court decision of *Stone World Sdn Bhd v Engareh (M) Sdn Bhd* [2020] 12 MLJ 237 where it was emphasised thus:

[78] It is important to emphasise that this appeal does not engage the inherent jurisdiction of the court to set aside a judgment on the grounds of illegality, or because it is null and void for the contravention of a statute, or by reason of a breach of the rules of natural justice, as expounded by the landmark cases of *Badiaddin and Serac Asia Sdn Bhd v Sepakat Insurance Brokers Sdn Bhd* [2013] 5 MLJ 1; [2013] 6 CLJ 673 ('Serac').

[46] If allowed to stand, this ex parte order — declaring that the defendants are not liable for the accident and in the circumstances where the defendants intentionally refusing to defend the claims against them in Singapore, would have the invidious effect of being incongruent with the very raison d'etre of REJA — which is a legislation providing for the reciprocal enforcement of judgments of superior courts between participating countries. This in my view would be within the category of 'contravention of statute' as stated by leading authorities, warranting the setting aside of the ex parte order.

[47] It would not be out of place for me to refer to the case of *Standard Chartered Bank (Singapore) Limited v Pioneer Smith (M) Sdn Bhd* [2015] MLJU 710; [2015] 7 CLJ 677 where I had occasion to say this on REJA:

[13] A little bit of history and background for context. It was as early as during the 17th century that English courts started giving recognition by enforcing foreign judgments, the theoretical basis being the concept of comity between nations, where the court of one nation is required to assist those of others. Subsequent developments saw the basis of enforcement to be on the doctrine of obligation whereby foreign judgments are enforced in England on the premise that such judgment over the defendant imposes a duty on the defendant to pay the sum for which judgment is given, and for which the courts in England are bound to enforce. This basically means that upon the delivery of the judgment, it must be enforced everywhere. The case of *Anthinarayana Mudaliar v Ajit Singh* [1953] MLJ 228;

A [1953] 1 LNS 2 is authority for the proposition that this is also the foundation of the enforcement of judgment between Malaysia and Singapore prior to the enactment of REJA. REJA however enshrines legal reciprocity, which arguably has a stronger theoretical affinity with the concept of comity, and which is generally effective only to the extent that foreign judgments do not directly conflict with the B other country's public policy (such as reflected in provisions contained in ss 3(2), 5(1)(a)(v) and 9(1) of REJA).

[48] The alleged fears expressed by the defendants concerning REJA must be put in proper context. They are understandably concerned about REJA but C deliberately allowed the plaintiffs pursued their claims against the defendants in Singapore without even entering appearance much less registering any resistance. And then with the ex parte order the defendants wished that any REJA proceedings be pre-empted. Yet the defendants had every right to be heard and contest the proceedings under REJA if and when the plaintiffs make D the necessary application thereunder. Registration of judgment sought to be enforced is not automatic and there are even provisions such as in ss 5 and 6 of the REJA for the setting aside of judgments already registered.

E **[49]** So the defendants' argument on the fears concerning REJA is not only unfair but also less than well-grounded.

[50] As such the ex parte order of 16 July 2021 ought to be set aside as it would not only prejudice the plaintiffs who were not heard but also deprive F them the opportunity to exercise their statutory right to invoke the provisions of REJA to enforce a judgment obtained in their favour in the High Court of Singapore. It prevents the exercise of a statutory right under REJA. For all intents and purposes it defeats the application of REJA. It is almost like a contravention of statute that justifies the ex parte to be set aside.

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The issue of forum

[51] I would be inclined to agree with the plaintiffs' counsel that the issue of forum of convenience raised by the defendants is of no relevance at this stage H given that judgments on the legal suits have been granted by the High Court of Singapore, and the same are eligible to be registered and enforced in accordance with the relevant provisions under the REJA.

[52] At the risk of repetition, the defendants could have but chose not to I challenge the jurisdiction of High Court of Singapore in Singapore. Further, there is also merit in the plaintiffs' submission that the issue of forum of convenience is also not relevant to the setting aside of the ex parte order because the application is not a transfer application, which is only applicable to settle the conflict of localities within the different branches of the High Court and

lower courts of Malaya, having regard to among others the provisions under s 3 of the Courts of Judicature Act 1964 as well as s 59 of the Subordinates Courts Act 1948 where the subordinate courts have exclusive and unlimited jurisdiction to hear running down claims, and O 57 of the Rules of Court 2012 on transfer of proceedings.

[53] In any event although it is irrelevant now, it should still be mentioned that whilst the defendants' place of residence and the place of the accident is undoubtedly in Malaysia, the material witnesses of this accident, other than for the defendants, are all from Singapore. All of the plaintiffs are residing in Singapore. The doctors and medical professionals treating the plaintiffs too are all from Singapore. The administrators of the deceased plaintiffs are also all from Singapore, and some of the plaintiffs have practical difficulties to travel to Johor given the serious injuries sustained from the accident.

[54] In other words it certainly cannot be said that the place of business of the defendants and the place of accident must mean that the forum of convenience would be in favour of the sessions court in Muar. After all the relevant conditions are to be applied disjunctively (see *Siti Nur Aishah bt Ishak v Golden Plus Holdings Bhd* [2017] 3 MLJ 701; [2017] 8 CLJ 272).

Applicability of s 96(3) of the RTA

[55] There is one other argument posited by the defendants. It is this. They contended that the plaintiffs do not have the right to set aside the ex parte order because according to s 96 of the Road Transport Act 1987, the plaintiffs are not third parties within the meaning of the section with the result that there is no requirement for notice to be served on the plaintiffs under s 96(3) before seeking a declaration. Further, the word 'proceeding' in the said statutory provision must mean proceedings in Malaysia and not elsewhere, and that the RTA is not applicable to an action filed in Singapore.

[56] The defendants also made mention of the High Court decision in *Mohamad Rafiq Muiz bin Ahmad Hanipah v Pacific & Orient Insurance Co Bhd & Ors* [2018] MLJU 896; [2018] 1 LNS 942 where the application of s 96(3) was stated as follows:

> [27] In this connection, no clearer judicial pronouncement of high authority on the right of the third party under s 96(3) of the Act has probably been expressed other than by a recent Court of Appeal in *Pacific & Orient Insurance Co Bhd v Rasip bin Hamsudi & Ors* [2017] 4 CLJ 572, to the following effect, in terms free from ambiguity:
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> > [20] This interest of the first, second and third respondents was statutorily and expressly recognised by virtue of the terms of the proviso to s 96(3) of the RTA. Any third party (like in this instance, the first, second and third respondents as

plaintiffs) bringing a claim in court involving a vehicle (the subject of the mandatory third party risk insurance under RTA) was a recognised party named in the proviso to s 96(3) as being entitled to be notified by the insurer (in this case the appellant) before or within seven days of the commencement of any proceedings under s 96(3) to declare the relevant insurance policy to be void and unenforceable. Such notice, it would also be noticed, required the appellant to specify the grounds that would be relied on by the insurer in such an application.

[21] It was also most significant to note that in the proviso itself it was spelt out that such third party (plaintiffs) if duly given the stipulated notice (with the grounds being relied upon) was entitled as a matter of right (at the sole option of such third party) be made a party to the proceedings brought by the insurer.

[57] The defendants now asserted that the plaintiffs were not entitled to the notice under s 96(3) of the RTA since they are not parties to any proceedings in Malaysia. There is according to the defendants no requirement for notice to be served on the plaintiffs under the said s 96(3) before seeking a declaration. The plaintiffs' action after all is in Singapore and is under the Republic's Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189).

[58] It is I think useful for the relevant provisions of s 96 of the RTA be set out herein, as follows:

96 Duty of insurers to satisfy judgements against persons insured in respect of third party risks

If, after a certificate of insurance has been delivered under subsection 91(4) to the person by whom a policy has been effected, judgement in respect of any such liability as is required to be covered by a policy under paragraph 91(1)(b) (being a liability covered by the terms of the policy) is given against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy, the insurer shall, subject to this section, pay to the persons entitled to the benefit of the judgement any sum payable there under in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgements.

No sum shall be payable by an insurer under subsection (1) —

No sum shall be payable by an insurer under subsection (1) if before the date the liability was incurred, the insurer had obtained a declaration from a court that the insurance was void or unenforceable:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgement obtained in proceedings commenced before the commencement of that action unless, before or within seven days after the commencement of that action, he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the grounds on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled if he thinks fit to be made a party thereto.

... (Emphasis added.)

[59] As such, essentially, s 96(1) spells out the liability of insurers under the subsisting policy of insurance to satisfy any judgment given against the insured person by making the necessary pay-out to those entitled to the benefit of the said judgment. These are the third parties, or those who suffered loss and damage because of the wrongful conduct of the insured who is covered under the relevant policy issued by the insurer.

[60] However, the insurer need not make any such insurance payment under s 96(3) to the third party if, before the liability is incurred (usually prior to the accident), the insurer manages to get a declaration that the policy of insurance is void and unenforceable. This is subject to prior notice having first been given to the plaintiff in the underlying accident suit (the third party), before or within seven days of the commencement of the action by the insurer seeking the declaration.

[61] That much on the law is clear. But here, the ex parte order sought by and granted to the defendants was not premised on any application for a declaration under s 96(3) of the RTA.

[62] There is a mention of s 96(1) in the intitulement, but that was all there was to it. Absolutely nothing on s 96(3) of the RTA in the course papers or in the written submissions. As such, the argument that the plaintiffs are not entitled to the notice under s 96(3) is irrelevant.

[63] And also, even if assuming s 96 of the RTA was applicable, going by the defendants' logic of argument, if they viewed, as they said they did, that the accident suit should properly be commenced in Malaysia such that the RTA ought to be the governing statute (and the plaintiffs should initiate the suit in the sessions court say in Muar), there is no rhyme or reason why the plaintiffs herein (who could potentially benefit from the judgment and the policy), as the third parties to the insurance contract between the first defendant and the two other defendants, were not served with any prior notice as mandated by the proviso to s 96(3) before the defendants moved to apply for the declaration as granted in the ex parte order.

[64] In any event, it is however quite plain that this OS was filed by the plaintiffs not due to any complaint about the failure of the defendants to serve their notice to the plaintiffs under s 96(3) of the RTA.

[65] Their grievance is predicated on the defendants' action in obtaining the ex parte order despite having the knowledge that final judgments had been

granted to the plaintiffs in Singapore, with the effect that the enforcement of the REJA, an Act of Parliament in force in Malaysia is now potentially frustrated.

[66] For all intents and purposes if allowed to stand, the ex parte order has the dire consequence of violating the provisions on reciprocal enforcement of judgments between the courts in Malaysia and Singapore — by preventing the plaintiffs from relying on REJA.

CONCLUDING REMARKS DECISION

[67] It is worthy of emphasis that given the fact that the defendants had at all material times be given the opportunity to challenge the claims made by the plaintiffs in the jurisdiction of the High Court of Singapore but deliberately chosen not to do so, or to set aside the judgments pronounced by the High Court of Singapore but elected not to do so, I find there is justifiable basis to consider this setting aside favourably.

[68] This is especially so since the plaintiffs had notified the first defendant of the steps taken in the proceedings at the High Court of Singapore. Yet the defendants sought for and obtained the ex parte order without notifying the plaintiffs, whilst at the same asked that the plaintiffs inform them if the plaintiffs were pursuing the registration of the judgments obtained from the High Court of Singapore under the Reciprocal Enforcement of Judgment Act 1958.

[69] Further, at this juncture and considering the status thus far achieved by the plaintiffs, considerations on jurisdiction and forum of convenience are of little significance if at all since judgments have been obtained from the High Court of Singapore and now likely to be proposed to be registered and enforced under the REJA. Most importantly, despite their protestations, the defendants would still have all the right to participate in and contest the proceedings under the REJA.

[70] As such, in view of the foregoing analysis and reasons, I therefore dismissed the preliminary objection raised by the defendants and allowed the application to set aside the ex parte order in this OS (encl 1), with costs to the plaintiffs.

Preliminary objection dismissed and ex parte order set aside.

Reported by Ashok Kumar